IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11565 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI ZAVERBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR KB PANDE for Petitioner

MR UR BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/12/2000

ORAL JUDGEMENT

1. Learned Advocate Mr. K.B. Pande for the petitioner seeks permission to delete Respondent No. 3, Deputy Secretary, Respondent No.4 - Secretary, Advisory Board (PASA) and Respondent No.6 Shri Becharbhai

Virjibhai Bhadani, Minister of Agriculture, Government of Gujarat, from this petition as parties, on instructions from his client. Permission is granted. Learned Advocate Mr. K.B. Pande for the petitioner further seeks permission to withdraw the averments/allegations

made against Respondents No. 3, 4 and 6 in this petition unconditionally on instructions of his client, so far as this petition is concerned. The Permission is granted.

2. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Vadodara City on 28th July, 2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The petitioner came to be detained on 28th July, 2000 in pursuance of the said order.

3. In the grounds of detention, the detaining authority has relied upon the fact that three offences are registered against the petitioner before Chani, Fateganj and Navapura Police Stations, under Sections 395, 397, 354, 504, 450 and 420 of the IPC. The detaining authority considered the investigation of the above three crimes registered against the petitioner. In addition to this, the detaining authority has also relied upon the statements of three witnesses as recorded on 14th July, 17th July and 27th July, 2000 by concerned police authorities. On assurance of anonymity of identity, the witnesses have narrated the incidents wherein the petitioner had beaten the witnesses and due to this, the public order was disrupted. From this material the detaining authority reached to the conclusion that the petitioner was a headstrong and hardened criminal and was indulged in the theft of agricultural seeds and was damaging to agriculture. The detaining authority further observed that since the petitioner was a headstrong person, due to his fear, nobody files any complaint against him. The detaining authority further observed that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act. Basing the above material, the detaining authority passed the order impugned under the PASA Act against the petitioner.

3. Learned Advocate Mr.K.B.Pande for the petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. Amongst various grounds urged by the petitioner

during hearing against the detention order, it was vehemently urged that the order of detention is vitiated by non-application of mind on the part of the detaining authority. It was urged that the detaining authority failed to consider properly the less drastic remedy of cancellation of bail available to the detaining authority.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995 (2) GLR 1134, the Division Bench of this Court observed that the order passed by the detaining authority while not considering the less drastic remedy of cancellation of bail, was based on clear non-application of mind on the part of the detaining authority, vitiating the detention order. This view was again fortified by the Division Bench of this Court in Letters Patent Appeal No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September.

6. The factual aspect reveals that the first crime came to be registered against the petitioner on 19th June, 1997, the second on 12th august, 1999 and the third on 11th May,2000. The statements of the witnesses relied upon by the detaining authority were recorded on 14th July and 27th of July, 2000. The detaining authority has observed that in all the three crimes registered against the petitioner, he was on bail, meaning thereby, the petitioner was enjoying bail right from June, 1997. He was again released on bail subsequently in the other two offences registered against him. Uptill July 2000, when the statements of the witnesses recorded nothing appears to have been done by the detaining authority to resort to the provisions of cancellation of bail under Section 437(5) of the Cr.P.C. Even after recording of the statements also, no action for cancellation bail appears to have been taken. The remedy of cancellation of bail was available to the detaining authority right from June, 1997, but as aforesaid, the same has not been resorted to. The detaining authority has simply brushed aside this aspect by merely saying that the proceedings of cancellation of bail was likely to consume more time and therefore the same was not contemplated. Non-application of mind by the detaining authority therefore qua legal position emerges through this observation of the detaining authority from the grounds of detention. The facts, therefore, of this case are covered by the decisions of this Court in the above two referred cases and in this case also for the above said reason, the order of detention is vitiated for non-application of mind by the detaining authority and the the order of

detention is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Vadodara City on 28th July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Sureshbhai Zaverbhai Patel is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair